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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 PHILLIP LEE TAYLOR,

12 Defendant.

CR12-149 TSZ

ORDER

13 THIS MATTER comes before the Court on defendant's motion for compassionate
14 release, docket no. 46. Having reviewed all papers filed in support of, and in opposition
15 to, the motion, the Court enters the following order DENYING the motion.

16 **Background**

17 Defendant was sentenced on December 6, 2012, to 144 months in the custody of
18 the United States Bureau of Prisons ("BOP"). *See* Judgment (docket no. 42). Defendant
19 is currently incarcerated at the Federal Correctional Institution ("FCI") at Big Spring,
20 Texas, and has a projected release date of January 10, 2022. He seeks immediate release
21 on the ground that his medical conditions (heart condition, hypertension, and obesity)
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1 increase the possibility of acute illness or death from Coronavirus Disease 2019
2 (“COVID-19”). Defendant, however, has previously tested positive for the coronavirus
3 that causes COVID-19, and during the ensuing 10-day quarantine period, he remained
4 asymptomatic. Three months later, on the eve of filing his motion for compassionate
5 release, defendant reported experiencing shortness of breath and received a steroid
6 medication. Def. Ex. 2 (docket no. 48 at 60-62); Gov’t Ex. A (docket no. 52-1). The
7 record does not support his assertion that further treatment is required.
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9 **Discussion**

10 A sentence is generally considered final and may not be altered except in limited
11 circumstances. *See* 18 U.S.C. § 3582(b); *see also* *Dillon v. United States*, 560 U.S. 817,
12 824 (2010). Pursuant to the First Step Act of 2018, however, a defendant may directly
13 request a reduction in the term of incarceration after exhausting administrative remedies.¹
14 *See* 18 U.S.C. § 3582(c)(1)(A).

15 **A. Conditions at FCI Big Spring**

16 Defendant bears the burden of establishing “extraordinary and compelling
17 reasons” justifying a reduction in his sentence. *See United States v. Powers*,
18 No. CR15-166, 2020 WL 3605748, at *1 (W.D. Wash. July 2, 2020); *see also* 18 U.S.C.
19 § 3582(c)(1)(A)(i). In determining whether “extraordinary and compelling reasons”
20 exist, the Court considers the “helpful guidance” offered by the application notes to
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22 ¹ The parties agree that defendant has met the prerequisite of exhaustion.

1 United States Sentencing Guideline (“USSG”) § 1B1.13. *See United States v. Lineberry*,
2 No. CR17-175, 2020 WL 6685044, at *1 (W.D. Wash. Nov. 12, 2020). Defendant
3 contends that the conditions at FCI Big Spring and BOP’s practices render him unable to
4 engage in the self-care necessary to avoid re-infection with the coronavirus that causes
5 COVID-19. This argument misconstrues the application notes to USSG § 1B1.13, which
6 envision that a defendant’s physical and/or mental condition constitutes an “extraordinary
7 and compelling” reason for compassionate release when it is so compromised that it can
8 no longer be managed in prison. *See United States v. Reynolds*, No. CR18-131, 2020 WL
9 3266532, at *4 (W.D. Wash. June 17, 2020); *Riley v. United States*, No. CR14-113, 2020
10 WL 1819838, at *7 (W.D. Wash. Apr. 10, 2020). By focusing on external factors
11 inherent in confinement or the facility or arising from BOP’s procedures, defendant
12 merely identifies factors affecting the risk of contagion for everyone at the correctional
13 institution, and offers no means of identifying specific individuals deserving of
14 compassionate release. *See Powers*, 2020 WL 3605748, at *2.

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16 **B. Safety of the Community**

17 A defendant may be granted compassionate release only if he or she is “not a
18 danger to the safety of any other person or to the community,” as evaluated in the manner
19 outlined in 18 U.S.C. § 3142(g). USSG § 1B1.13(2). Having considered the relevant
20 factors, namely (i) the nature and circumstances of the charged offense, (ii) the history
21 and characteristics of the defendant, and (iii) the nature and seriousness of the danger to
22 any person or the community that would be associated with the defendant’s release, *see*

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2 18 U.S.C. §§ 3142(g)(1), (3), & (4), and 3553(a)(1) & (2)(C), the Court concludes that,
3 even if defendant could demonstrate “extraordinary and compelling reasons” to support
4 his motion, he has not made the requisite showing that his immediate release would not
5 pose a risk to the “the safety of any other person or to the community.”

6 Defendant is a repeat offender, having previously been convicted of a child
7 pornography offense and having violated the terms of his supervised release in the prior
8 case by again possessing pornographic materials. See Presentence Report at ¶¶ 36 & 40
9 (docket no. 37). In this matter, defendant engaged in efforts to evade detection, by
10 stealing a laptop from his employer and representing to law enforcement officers that the
11 device was the one he had taken with him on a trip to Alabama. See Gov’t Sentencing
12 Memo. at 3 (docket no. 39). Defendant’s crime of choice requires nothing more than
13 access to the Internet, and defendant’s plan of release to a halfway house for 12 months
14 does nothing to satisfy the Court that defendant will not revert to the same illegal conduct
15 or worse. See United States v. Blouin, No. CR16-307, 2020 WL 5645050 (W.D. Wash.
16 Sept. 22, 2020); United States v. Sims, No. CR18-262, 2020 WL 2838611 (W.D. Wash.
17 June 1, 2020); see also United States v. Ramey, No. CR13-368, 2020 WL 4226543
18 (W.D. Wash. July 23, 2020). Defendant’s potential for reoffending is particularly
19 concerning in light of the difficulties in monitoring his behavior that result from social
20 distancing and other protocols designed to avoid the transmission of the coronavirus that
21 causes COVID-19. Because defendant poses a serious danger to the community if he is
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1 released prematurely from prison, defendant's motion for compassionate release is
2 DENIED.
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4 **Conclusion**

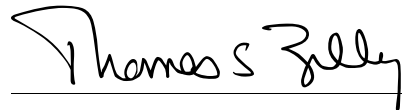
5 For the foregoing reasons, the Court ORDERS:

6 (1) Defendant's motion for compassionate release, docket no. 46, is DENIED;
7 and

8 (2) The Clerk is directed to send a copy of this Order to all counsel of record.

9 IT IS SO ORDERED.

10 Dated this 12th day of February, 2021.

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13 Thomas S. Zilly
14 United States District Judge
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